Supreme Court, U.S.
FILED
MAY 3 1993
OFFICE OF THE CLERK

No. 92-1573

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

VICTOR G. GRAHN, et al. - - - Petitioners,

versus

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Airline Division, Local 608, et al. - - - - - Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF UNITED PARCEL SERVICE CO. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE CASE

United Parcel Service Co. ("UPS Co.") is an airline carrier.[1] Its primary business is the air transportation of express packages. Prior to August, 1987, UPS Co.

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[1]Pursuant to Supreme Court Rule 29.1, United Parcel Service Co. is a wholly-owned subsidiary of United Parcel Service of America, Inc. Neither of the companies are publicly traded.

subcontracted with a number of different air carriers for the transportation of these express packages. (J.A. 958-59). These subcontractors actually flew aircraft owned by UPS Co. On August 24, 1987, UPS Co. announced that it was going to assume operational control of its aircraft. Preliminary to this, UPS Co. purchased International Parcel Express, Inc. ("IPX"), one of the former subcontractors. (J.A. 963).

After purchasing IPX, UPS Co. recognized the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America AFL/CIO ("Teamsters") as the collective bargaining representative for the twenty-five former IPX crewmembers and future new crewmembers.[2] Teamsters Local 608 was later recognized as the representative of UPS Co.'s aircraft mechanics.[3] (J.A. 963-64).

In October, 1987, UPS Co. and Teamsters Local 608 commenced negotiations for a collective bargaining agreement covering crewmembers. These negotiations lasted over three months. (J.A. 961, 965). One topic of discussion, involving a number of proposals and counterproposals, was how UPS Co. would develop the initial seniority list for the new crewmembers. Eventually, the parties reached agreement. The terms of the agreement were embodied in a document entitled "Transition of Flight Crewmembers" ("Transition Letter"). (J.A. 965, 967-74).

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[2]"Crewmembers" is the term used to refer to the Captains, First Officers, Professional Flight Engineers and Second Officers employed by UPS Co. to operate its aircraft.

[3]Teamsters Local 608 is used throughout the Brief to refer to the collective bargaining agent for UPS Co.'s crewmember group. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (International Teamsters) is, of course, a party but only because Teamsters Local 608 was in trusteeship.

The collective bargaining agreement between UPS Co. and Teamsters Local 608, including the Transition Letter, was ratified on January 4, 1988, and signed by the negotiators.

UPS Co. hired its first flight crewmembers on January 18, 1988. (J.A. 976). The development of a new seniority list for these new-hires, as established by the Transition Letter, was discussed with each new-hire during the application process. Lee Wallace, Manager of UPS Co.'s Flight Operations and one of the negotiators of the contract, explained how the seniority list worked based on his understanding of the parties' mutual intent during negotiations. (J.A. 975, 977-78).

Wallace explained that the Transition Letter was designed to afford "the contract crewmembers who were ultimately employed by United Parcel Service a seniority within status higher than anyone who was to be hired from the outside or who was to be hired in an upgraded position." (J.A. 979). As Wallace further explained, "if an individual held a position at a contract carrier and was subsequently hired by United Parcel Service in a position higher than that, that was an upgraded position." (J.A. 979).

The Transition Letter, in pertinent part, states as follows:

> "It is hereby mutually agreed and understood by and between the parties . . . that appropriate provisions of the Agreement ratified January 4, 1988, be amended from January 4, 1988, to January 1, 1989, unless otherwise provided in this Letter of Agreement, to provide the additions of complete crews to the Crewmembers' Seniority List (those crews transferred with the original Air Certificate), in an orderly manner during the return of aircraft to [UPS] from contractors and the addition of new aircraft to the [UPS] fleet.
>
> During the transition phase outlined above, seniority groups will be established and added to the seniority

> list in Article 4 of said Agreement dated January 4, 1988, beginning with number twenty-five (25).
>
> Seniority will be assigned to crewmembers using the following procedure:
>
> A. Group I shall be former [UPS] contractor crewmembers who were flying for a [UPS] contractor on or after September 1, 1987, and also crewmembers who are acquired as a result of a merger with, or acquisition of, another carrier. *Group I Crewmembers will be hired in position by status and aircraft type.* Group I crewmembers will be positioned on the administrative lists by those hired September 1, 1987, and earlier, arranged by date of birth followed by those hired after September 1, 1987, arranged by date of birth.
>
> As aircraft are released by the contractors, or new and additional aircraft are introduced into service, such *Group I crewmembers who are hired will be placed on the administrative lists by status and birth date. . . .*
>
> * * *
>
> Group II will be crewmembers other than those crewmembers specified in Group I above. *Group II crewmembers will be hired in position by status and aircraft type."* (J.A. 514-15)(Emphasis added).

UPS Co. categorized crewmembers, for purposes of their placement on the initial seniority list, pursuant to the Transition Letter. Specifically, Group I crewmembers were those employed by a former UPS Co. contract carrier before or after September 1, 1987. September 1, 1987 was the determinative date for seniority purposes. Crewmembers hired and working for one of the contract carriers on or before September 1, 1987, were placed in Group I at the top of the seniority list. Those crewmembers hired by a former contract carrier after September 1, 1987, were placed below those hired by a contract carrier on or before September 1, 1987. (J.A. 913, 914-19).

The Transition Letter also called for hiring "in position by status and aircraft type" for Group I crewmembers, and positioned them on the seniority list "by status and birth date." (J.A. 894-97). Certain contract crewmembers were hired by UPS Co. in an upgraded status. For example, they were a Second Officer with the contract carrier prior to September 1, 1987, but hired later by UPS Co. as a First Officer. Many of these crewmembers, including all Plaintiffs but Edwards, had been promoted to the higher position by the former contractor before September 1, 1987, but, as of September 1, 1987, had not completed all the training necessary to be qualified in the new classification. Specifically, these crewmembers had not completed ground school training, simulator training and/or initial operating experience (IOE) for the upgraded position. (J.A. 988). These crewmembers were thus placed in the subgroup of Group I which, for administrative purposes, UPS Co. and Teamsters Local 608 designated as Group IA.

UPS Co.'s interpretation and application of the Transition Letter was consistent with a graph prepared by Teamsters Local 608 demonstrating how the seniority list would be developed. UPS Co. agreed with Teamster Local 608's explanation of the Letter of Transition. The graph was, in fact, used by UPS Co. personnel representatives to explain seniority placement to newly-hired crewmembers. (J.A. 989-90). The graph referred to three separate groups within each of the three flight crew classifications of, in descending order; Captain, First Officer and Second Officer. These groups were:

Group I	Group I—A	Group II
•Crewmembers employed by contractors prior to Sept. 1, 1987	•Crewmembers employed by contractors after Sept. 1, 1987,	•Non-contractor crewmembers hired in position by status & aircraft
•Crewmembers in the event of a merger	•Hired in an upgraded status	•Aligned by date of birth by class:
•Aligned by date of birth	•Aligned by date of birth	

(J.A. 918).

By December 28, 1988, UPS Co. had employed 790 crewmembers. On that date, UPS Co. published its first official seniority list, placing crewmembers on the list in accordance with the terms of the Transition Letter and the intent thereof. (J.A. 993). Plaintiffs in this action were all positioned on the initial seniority list as Group IA First Officers. Their seniority numbers were as follows: Grahn—418, Cooper—421, Dabe—424, Gallagher—431 and Edwards—415.

In January and February, 1989, a number of crewmembers filed letters protesting their placement on the seniority list. Such protests were proper as the contract gives crewmembers thirty days, after their names first appear on the seniority list, to challenge their placement. Among those challenging their seniority placement was Plaintiff Gallagher who, on January 27, 1989, drafted a letter to Lee Wallace, concerning what Gallagher claimed was his "Seniority List Misplacement." (J.A. 770). Gallagher protested his placement in Group IA, as opposed to Group I. (Id.) A total of eighteen crewmembers protested their placement in Group IA. (J.A. 81).

These letters of protest were treated as grievances by Teamsters Local 608 and scheduled for presentation to a four member System Board of Adjustment in February and March, 1989. (J.A. 995-97). Section 184 of Title II of the Railway Labor Act ("RLA"), 45 U.S.C. 151 et seq., requires air carriers and the carrier's employees' representative to establish a System Board of Adjustment to resolve disputes over the interpretation and application of the parties' collective bargaining agreement. UPS Co. and Teamsters Local 608 established such a procedure in their labor contract. The System Board of Adjustment is composed of two levels. The grievances are first heard by a four member System Board composed of two company and two union representatives. If they deadlock on the grievance, the

contract then calls for the parties to select an impartial arbitrator to hear the evidence and break the deadlock.

Following hearings held on February 28; March 1, 2 and 3, 1989, the four member System Board rendered written decisions on March 9, 1989, on the crewmembers' protests that they should be in Group I, rather than IA. Each decision stated:

> "All crewmembers hired by [UPS] in 1988 who were previously working for a [UPS] contractor and who were hired by the contractor prior to September 1, 1987, regardless of IOE completion, shall be placed in Group I; followed by all crewmembers hired by the [UPS] in 1988 who were previously working for a [UPS] contractor and who were hired by the contractor on or after September 1, 1987. There shall be no retroactive compensation." (J.A. 274).

These System Board decisions resulted in the development and publication of a revised seniority list in March, 1989.[4] The revised seniority list moved those crewmembers who had been Group IA into Group I, because they were hired by UPS Co. in a status higher than they held at the carrier as of September 1, 1987. Group IA crewmembers, at this point, consisted solely of those crewmembers who were newly-hired by the contract carrier after September 1, 1987. UPS Co. adjusted the seniority position of all

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[4]The System Board members were Neil Konietzko and Lee Wallace, representing UPS Co., and William Ferchak and Robert Miller, representing the Union. Wallace, as previously mentioned, is UPS Co.'s Manager of Flight Operations. Konietzko was UPS Co.'s Air Region Labor Relations Manager. Ferchak was trustee of Local 608. Miller, who is now President of the Independent Pilots Association, the crewmembers' collective bargaining representative since January 10, 1990, was a crewmember employed by UPS Co. and a Local 608 steward. (J.A. 954, 981, 564, 569, 615).

crewmembers who fell within the scope of the System Board decision, even if a particular crewmember had not filed a grievance. Plaintiffs' positions on the seniority list were changed as follows: 309 Edwards, C.B.L.; 308 Grahn, V.; 316 Cooper, J.; 341 Dabe, R.; and 375 Gallagher, R.D. (J.A. 1025-26).

Almost immediately, grievances were filed by the crewmembers who had lost seniority status as a result of the March 9, 1989 System Board decisions. UPS Co. received a petition, signed by 156 crewmembers, specifically protesting the March 9, 1989 decisions. Attached to the petition were letters from each of the four Teamster Local 608 representatives who negotiated the Transition Letter with UPS Co. (J.A. 574-75, 894, 923, 937). Each letter confirmed that it was both UPS Co.'s and Teamsters Local 608's intent in the Transition Letter, to place in Group IA, those crewmembers hired by UPS Co. from the contract carriers in a status higher than that held with the contractor on September 1, 1987. Illustrative are the comments of Dick Greene, one of the original union negotiators of the Transition Letter of Agreement. He stated the following concerning the effect of the Transition Letter:

> "This meant that those who were hired after September 1, 1987, by a contractor, and those who advanced to a higher status after September 1, 1987, and subsequently hired by UPS, would be placed on the administrative lists below those hired by a contractor before September 1, 1987." (J.A. 934).

Based upon the evidence submitted by the four original Teamster Local 608 negotiators, and the pending grievances, Konietzko and Ferchak agreed to hold a special session of the System Board of Adjustment to hear evidence on the issue. (J.A. 567-68). Ferchak, Wallace and Konietzko were three of the System Board members. Dana Bennett, a line crewmember, was the second union representative

on the Board. Following hearings on the grievances challenging the March 9, 1989 decision, the System Board issued a decision on June 21, to refer the case back to "a joint Company-Union committee for resolution." (J.A. 782).

The individuals who served on the "joint committee", called for by the System Board's June 21, 1989 decision, were selected by UPS Co. and Teamster Local 608. (J.A. 1004). This committee was led by four crewmembers—Randy Safewright, Jim Yonts, John Hallin and Ken Dills. There were two members from each of the "competing camps." Safewright and Yonts represented those crewmembers who believed that crewmembers hired in an upgraded status should be in Group IA. Hallin and Dills represented those crewmembers who believed that the March 9, 1989 System Board decision was correct.[5]

On July 14, 1989, the joint committee provided a recommendation to UPS Co. and Teamsters Local 608 to resolve the Group I—Group IA seniority placement issue. Konietzko and Ferchak approved and signed the recommendation as an agreement between the parties on August 2, 1989. The substance of the recommendation was carried over to the parties' August 2, 1989 Agreement. (J.A. 590-91).

The document was entitled Agreement on Development of Seniority List. It provided:

> "All crewmembers hired by the Company in 1988 who were previously working for a company contractor, i.e. Evergreen, PHH, Interstate or Orion, and who were hired by the contractor prior to September 1, 1987, and successfully completed *all* phases of ground school

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[5]Andy Gulick, Flight Operations Labor Manager, was appointed to the committee for the purpose of providing it with whatever information was available from the Company. (J.A. 584-85).

> relative to the seat position held prior to September 1, 1987, regardless of date of IOE completion, shall be placed in Group I; followed by all crewmembers hired by the company in 1988 who were previously working for a company contractor, i.e. Evergreen, PHH, Interstate and Orion, and who were hired by the contractor on or after September 1, 1987, and those who had not yet successfully completed *all* phases of ground school relative to the seat position." (J.A. 279).

The UPS Co. Crewmember Seniority List was adjusted on August 2, 1989, to reflect the above agreement. The August 2, 1989 Agreement required those crewmember hired by UPS Co. in an upgraded status to be in Group IA, unless they had completed their ground school training for the upgraded position prior to September 1, 1987. (J.A. 851-53). Plaintiffs, who had been hired in an upgraded status, had not completed ground school training for the upgraded position prior to September 1, 1987. (J.A. 787, 728, 687, 1035).

Plaintiffs Gallagher, Edwards, Grahn and Cooper filed several grievances in August and September, 1989, protesting UPS Co.'s and Teamsters Local 608's decision to execute the August 2, 1989 Agreement. (J.A. 945, 946, 947, 948, 786, 1070). In each of the grievances, Plaintiffs attacked UPS Co.'s and Teamsters Local 608's authority to change their seniority status. The grievances were denied by UPS Co. They were not processed beyond the initial steps of the grievance procedure by Teamsters Local 608. (J.A. 858-60). Plaintiff Dabe did not file a grievance subsequent to the August 2, 1989 Agreement. (J.A. 696).

SUMMARY OF ARGUMENT

Supreme Court Rule 10.1 states that certiorari will be granted "only when there are special and important reasons therefor." Petitioners do not identify a single reason, within the meaning of Rule 10.1, that would justify the

granting of certiorari in this case. They claim that the District Court granted summary judgment without addressing the "real question" raised by their complaint. However, the record shows that the District Court considered all of Petitioners claims, determined they were without merit, and granted summary judgment of the entire case, in Respondents' favor. Subsequently, the Sixth Circuit Court of Appeals conducted a de novo review of the District Court's decision and, after full appellate briefing and oral argument by the parties, affirmed the District Court's decision per curiam. A total of four federal court judges have considered Petitioners evidence and legal argument and found them insufficient to preclude summary judgment. Petitioners are attempting to obtain a third review of the record evidence, which is not a proper justification for granting certiorari.

ARGUMENT

The Petition Should Be Denied Because Petitioners Can Show No Special Or Important Reason For Granting Certiorari As Required By Supreme Court Rule 10.1.

Petitioners pose three questions for review. Each concerns the propriety of the District Court's decision to grant summary judgment in this case and the Sixth Circuit Court of Appeal's affirmance of that decision. The questions presented for review are whether:

(1) the lower courts erred as a matter of law in holding that Respondents did not violate the Railway Labor Act ("RLA"), 45 U.S.C. Sections 152 Seventh and 156, by changing terms and conditions of employment contrary to the RLA and the existing collective bargaining agreement;

(2) the lower courts erred as a matter of law in holding that UPS Co. and Teamsters Local 608 were authorized to execute a "side agreement" without

considering whether the procedures utilized by the Respondents violated the RLA, the existing collective bargaining agreement and the Union's duty of fair representation; and

(3) the Sixth Circuit Court of Appeals failed to apply the correct standard of review. (Petition, pages i, ii and iii).

Supreme Court Rule 10.1 sets forth those considerations which govern the granting of certiorari. Initially, the Rule provides that certiorari "will be granted only when there are special and important reasons therefor." Rule 10.1(a) through (c) further expands upon the type of reasons which will justify the granting of certiorari. They include, for example, a decisional conflict between two Circuit Court of Appeals, a decisional conflict between a state court of last resort and a federal court of appeals, or a case involving "an important question of federal law which has not been, but should be, settled" by the Supreme Court. Petitioners do not identify a single reason, within the meaning of Rule 10.1, justifying a grant of certiorari in this case.

Petitioners' arguments in support of their Petition for Certiorari are insubstantial and represent nothing more than their disagreement with the lower courts' analysis of this case. Petitioners complain that the District Court granted summary judgment for Respondents without addressing the "real question" raised by their Complaint, whether Teamsters Local 608 breached its duty of fair representation. They claim that there were genuine issues of material fact concerning whether Teamsters Local 608 breached its duty of fair representation. They also claim that the Sixth Circuit Court of Appeals applied an incorrect "standard in reviewing the District Court's grant of summary judgment." Petitioners' arguments are simply without merit.

First, the District Court granted summary judgment of the entire case. Assuming that the District Court did not specifically address in its Memorandum Opinion every conceivable issue raised by Petitioners' Complaint, it was not required to do so under Rule 52(a) of the Federal Rules of Civil Procedure ("FRCP"). That Rule states:

> "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule."

Accordingly, the District Court's failure to specifically address in its Memorandum Opinion each contention raised by Petitioners does not mean that the Court did not consider and reject their claims.

Furthermore, Petitioners' contention that the District Court did not consider their claims is simply not supported by the record. The District Court's two Memorandum Opinions, dated June 18, 1991 and January 24, 1992, reflect that the Court was fully aware of and considered their claims. The January 24, 1992 Memorandum Opinion specifically states: "Plaintiffs assert that defendants breached the collective bargaining agreement and the duty of fair representation by entering into a written side agreement . . . ." The District Court concluded it's Memorandum Opinion by holding "Plaintiffs' allegations' (sic) are not sufficient to withstand the defendants' motion for summary judgment." (Petition Appendix, p. 7a). Clearly, the District Court considered and found Petitioners' claims deficient.

Petitioners try to make it appear that the District Court misperceived the "real question" in this case by focusing on whether Teamsters Local 608 had apparent authority to execute the August 2, 1989 Agreement. This issue was neither immaterial nor improperly raised by the District Court as Petitioners suggest. In fact, Petitioners raised

the issue themselves by arguing that the following provision in the labor contract precluded the parties from negotiating the August 2, 1989 Agreement:

> "No new Supplements, Riders or Addenda to this Agreement shall be negotiated by any of the parties hereto, unless otherwise agreed to by the Employer and the National Negotiating Committee. Any Supplement, Rider or Addendum not agreed to by the National Negotiating Committee will be null and void." (J.A. 250).

Petitioners argued in their initial Motion For Summary Judgment that the above contractual language invalidated the August 2, 1989 Agreement between UPS Co. and Teamsters Local 608 since it was not approved by the National Negotiating Committee. (J.A. 259). UPS Co. responded to this argument by asserting that Teamsters Local 608 had apparent or actual authority to negotiate the August 2, 1989 Agreement, despite the above-quoted contract language. (J.A. 319-22). It is not surprising that the District Court decided to address the issue. Indeed, Petitioners would probably have complained if the District Court had not addressed the issue.

Petitioners' argument that the District Court and the Sixth Circuit Court of Appeals erred in granting and affirming summary judgment because there were genuine issues of material fact, is also without merit. The alleged genuine issues of material fact are neither material nor supported by record evidence. Indeed, Petitioners themselves moved for summary judgment arguing that there were no genuine issues of material fact.

More significantly, Petitioners are precluded from arguing on appeal that there are genuine issues of material fact precluding summary judgment. Petitioners, in response to UPS's Motion for Summary Judgment in District Court, did not argue that there were genuine issues of material

fact. (J.A. 420). If Petitioners had believed that there were genuine issues of material fact precluding summary judgment from being entered against them, they had the obligation under FRCP 56(c) to bring those facts to the District Court's attention. Having failed to do so, they are precluded from arguing that the District Court erred on this basis.

It is also significant that every issue which the District Court supposedly ignored was presented by Petitioners to the Sixth Circuit Court of Appeals through an appeal of the District Court's judgment. The Sixth Circuit Court of Appeals' review of the decision to grant summary judgment was de novo. See, *Goodman* v. *Mead, Johnson & Co.*, 534 F.2d 566 (3rd Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977). The Sixth Circuit Court of Appeals, after full appellate briefing and oral arguments by the parties, held, in a per curiam decision:

> "Having carefully reviewed the record and the issues presented in the appellate briefs and the arguments of counsel, we find no error warranting reversal." (Petition Appendix, p. 3a).

There is no basis for concluding or even arguing that the Sixth Circuit Court of Appeals did not review and consider the issues raised by Petitioners. The Sixth Circuit stated that it reviewed Petitioners' claims. Petitioners, however, contend that there is an issue as to whether the appellate court "did or did not apply the correct standard in reviewing the District Court's grant of summary judgment." However, Petitioners do not in any way indicate how the Sixth Circuit Court of Appeals applied an incorrect standard of review. Rather, Petitioners have shown nothing more than that they disagree with the Sixth Circuit Court of Appeals' decision.

Despite all of Petitioners' arguments as to how the lower courts ignored the "real question" in this case, it is clear

that summary judgment was appropriate in this case. Petitioners' arguments concerning the merits of their claims demonstrate the appropriateness of the summary judgment by the District Court.

First, Petitioners claimed that UPS Co. and Teamsters Local 608 violated Sections 156 and 152 Seventh of the RLA with regard to the procedures utilized to effect a change in the collective bargaining agreement. All legal precedent clearly establishes that the procedural requirements of Sections 152 Seventh and 156 may be expressly or impliedly waived by the parties to the contract. See, *Railway Labor Executives Assn.* v. *Boston & Maine Corp.*, 664 F.Supp. 605 (D.C. Maine 1987); *Childers* v. *Brotherhood of Railroad Trainmen*, 192 F.2d 956 (8th Cir. 1951) and *Napier* v. *System Federation*, 127 F.Supp. 874 (W.D. Ky. 1955).

With respect to Teamster Local 608's alleged breach of its duty of fair representation, Petitioners have presented nothing more than conclusory allegations that the Union acted arbitrarily, discriminatorily or in bad faith. Petitioners provided no evidence which would create even an inference that local 608's conduct was "so far outside a 'wide range of reasonableness' [citations omitted] that it was wholly 'irrational' or 'arbitrary'." *Air Line Pilots Association* v. *O'Neile*, _____ U.S. _____, 111 S.Ct. 1127, 1136 (1991).

Teamsters Local 608's actions were indeed completely reasonable. The August 2, 1989 Agreement was a classic compromise between two competing groups of employees who had diametrically opposed interests and viewpoints. One group believed the Transition Letter required crewmembers hired by UPS Co. in an upgraded status to be placed in Group IA. The other group of crewmembers believed that the Transition Letter imposed no such requirement. Teamsters Local 608 acted reasonably in call-

ing a System Board to hear the evidence presented by those crewmembers who disagreed with the March 9, 1989 System Board. Furthermore, it was reasonable for Teamsters Local 608 to allow representatives of the two competing pilot groups to recommend a resolution of the conflict.

There is simply no evidence that Teamsters Local 608 acted arbitrarily, discriminatorily or in bad faith. Accordingly, it is not surprising that the District Court granted summary judgment on this claim or that the Sixth Circuit Court of Appeals affirmed the dismissal.

Petitioners' contention that the contract was not followed, since the System Board did not have the authority to reconsider its prior decision or refer the matter back to the parties for resolution, has been a red herring pursued by them since the beginning of this case. The August 2, 1989 Agreement was a negotiated agreement between UPS Co. and Teamsters Local 608. It was not a decision by the System Board of Adjustment. The District Court realized as much when it held that the "issue to be resolved in the motions for summary judgment is not whether the Board had the power to reconsider a 'final and binding decision' [citations omitted] . . . but whether the company and union representatives were authorized to create a side agreement . . . ." (Petition Appendix, p. 20a).

Supreme Court Rule 10.1 provides that certiorari will be granted "when there are special and important reasons therefor." This Petition for Certiorari presents no 'special and important reasons' justifying the grant of certiorari. A total of four federal court judges have considered Petitioners' evidence and legal arguments and found them insufficient to preclude summary judgment. Petitioners are simply attempting to obtain a third bite of the apple with this Petition for Certiorari. Providing a third review of the sufficiency of the evidence of record is not a proper justification for the grant of certiorari.

CONCLUSION

In light of the foregoing, United Parcel Service Co. requests that this petition be denied.

Respectfully submitted,

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